

# The Pensions Regulator's general code of practice finally laid in Parliament



## What you **need to know**

- The general code of practice (previously called the single code) brings together 10 of The Pensions Regulator's (TPR's) current 15 codes of practice, aiming to provide one set of clear, consistent expectations on scheme governance (including investment governance) and administration.
- The code was laid before parliament on 10 January, nearly three years after the original consultation. The code is expected to come into force on 27 March 2024.
- The code sets out the formal regulatory expectation of how pension schemes should comply with the requirements of the 2018 Governance Regulations. In particular, this includes the requirements for schemes to establish and operate an effective system of governance (ESOG), with schemes with more than 100 members also carrying out a regular Own Risk Assessment (ORA).
- While the new code looks different and is easier to read, the content remains largely the same as the original draft. There is a greater focus on proportionality, and some of the requirements have been softened (for example, around the remuneration policy and ORA timeframes). The code also seeks for schemes to align practice with TPR's expectations around equality, diversity and inclusion.



## **Actions** you can take

- **Assess how your scheme's governance framework and policies compare to the ESOG expectations** set out in the code.
- Put in place an **action plan to address any gaps** in your governance framework and to refresh any policies that are out of date, **based on what is proportionate for the circumstances of your scheme**.
- **Plan your approach to risk management** and how to tackle the ORA requirements, including the timeframe for the first ORA.
- Consider a **trustee effectiveness assessment** to take stock of any knowledge or skill gaps.

## The key changes since the previous draft of the code

Item	What has changed?
<b>ORA timeframe (for schemes with more than 100 members)</b>	There is more flexibility for schemes to produce an ORA on their own timetable provided it is completed at least every three years. There is also a relaxation of the timeframe for the first ORA, with schemes not expected to have to complete one now until 2026 at the earliest, depending on scheme year end dates.
<b>What does an ORA actually involve?</b>	Despite industry requests TPR has not provided guidance or a template to help schemes complete an ORA. They have, however, clarified that whilst the ORA is important, they expect the focus of governance activities to be on maintaining an ESOG. The ORA is then a review of the ESOG and how well it is working in practice.
<b>Remuneration policy (for scheme with more than 100 members)</b>	TPR has softened the requirements around the potentially contentious draft remuneration policy requirements. They have confirmed that the policy should only cover costs for which the trustees are directly responsible. It does not need to set out actual levels of remuneration paid and instead is about the framework for ensuring value for money.



# The finer detail: Key parts of the general code

## What is a code of practice?

A code of practice sets out the regulatory expectations for how schemes should meet the legal requirements. The general code is therefore not law, but if/when determining whether legal requirements have been met, a court or tribunal must take any relevant terms of a code of practice into account.

## Who does the new code apply to?

The new code applies to governing bodies (i.e. trustees and managers) of all occupational defined benefit, defined contribution, personal and public service pension schemes.

## Which of the existing codes are not yet incorporated?

The five existing codes which have not been incorporated into the general code are those relating to notifiable events, modification of subsisting rights, funding defined benefits, the material detriment test and the authorisation/supervision of master trusts. These codes are expected to be incorporated at a later date.

## What are the origins of the ORA/ESOG?

The requirements were introduced into UK law via the 2018 Governance Regulations stemming from the European Commission's IORP II Directive. The general code effectively brings the necessary provisions into force.

## What policies and processes make up an ESG?

The general code sets out that an effective system of governance should include processes and procedures to ensure compliance in the following areas (which are covered in detail in separate modules in the new code, with some exceptions for schemes with fewer than 100 members):

- The role of the trustees and the chair including meetings and decision-making
- Remuneration policy
- Trustee knowledge and understanding including building/maintaining knowledge as well as the governance around identifying gaps and documenting training
- Dispute resolution procedures
- Risk management including identifying and assessing risks, managing risk using internal controls and continuity planning
- Conflicts of interest
- Managing advisers and service providers
- Investment governance including stewardship, decision-making, monitoring and climate change considerations
- General principles for member communications.

TPR stresses that the detail of what constitutes an ESG will depend on the size, nature, scale and complexity of the activities of the scheme.

## What is an ORA?

Schemes with more than 100 members must carry out an assessment of how well governance systems are working and potential risks are managed.

- The timeframe for the first ORA depends on your scheme's year end and should be at least two years from the code coming into force (i.e. 2026). Subsequent ORAs must be carried out at least every three years.
- The ORA does not have to be sent to TPR but should be recorded and could be requested as part of TPR's investigations.
- The new code sets out a list of areas that the ORA should cover and provides scope to incorporate other already established risk management activities.

For further information, please get in touch with **Rob Wallace** or **Vicki Hayter** or speak to your usual XPS Pensions contact.



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